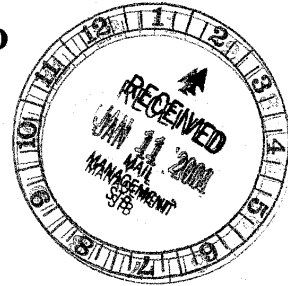


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BEFORE THE
SURFACE TRANSPORTATION BOARD

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EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS OF AG PROCESSING INC

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Dated: January 11, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS OF AG PROCESSING INC

Ag Processing Inc ("AGP") filed opening comments on November 17, 2000 ("Comments") in response to the Board's Notice of Proposed Rulemaking ("NPR"). Several of the reply comments filed by Class I railroads make reference to AGP's Opening Comments.

None of the major U.S. railroads -- or the Association of American Railroads ("AAR"), for that matter -- take issue with the assertions by AGP and other commentors that post-merger behavior by railroads frequently entails market foreclosure behavior in the form of refusals to quote rates over gateways or through other actions, where the effect is to prohibit on-line originations to reach off-line destinations or vice-versa. See, for example, NPR, Appendix N, sheets 309, 310, 317, and Appendix K, sheet 243. Where

market foreclosure is accomplished through gateway routing restrictions or through gateway rate barriers, the obvious remedy is a condition which requires gateways to be kept open both physically and economically.

The Burlington Northern and Santa Fe Railway Company ("BNSF") is one of the railroads whose Reply Comments refer to AGP. At page 15 of its Reply, BNSF asserts that proposals for "expansive gateway regulation" are merely efforts to "drive down future rail rates," citing pages 5-6 of AGP's Opening Comments as an example of such a proposal.

However, at pages 27-28 of its Reply Comments, BNSF, once again citing to pages 5-6 of AGP's Opening Comments, refers to requests that the Board's rules require that post-merger gateways be kept open operationally and economically. This time, BNSF states that it "agrees," counseling only against efforts to define by regulation each of the many factual patterns that can arise in gateway situations. We assume that BNSF's more thoughtful response, at pages 27-28 of its Reply, represents its actual views toward gateway conditions.

Norfolk Southern is agreeable to examining gateway situations on a case-by-case basis, but opposes requiring post-merger gateway access by rule. NS Reply Comments at 24-25. CSX takes the position that gateway relief should be limited to "important transcontinental (or similar international) preexisting gateways, with established origin and destination pair flows on a commodity-specific basis." CSX Reply Comments at 36-38. Just how these

limiting factors would be employed is not explained by CSX, although it is evident that their purpose is to circumscribe gateway relief and elevate the right of merged carriers to exercise their new monopoly to the exclusion of market access by shippers. The Board should reject that approach.

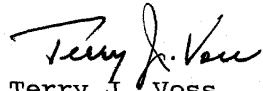
Union Pacific agrees that market foreclosures are a "wide-spread concern," but suggests that bottleneck rate relief is the proper solution to post-merger market foreclosures. Union Pacific Reply Comments at 13-15. This, too, is an impractical and unwise proposal, for it would turn every post-merger market foreclosure into a hugely expensive, complicated, and time-consuming rate case. As the Board knows full well, its procedures for resolving rate disputes are clearly defined only where the dispute involves high-density, repetitive movements susceptible to treatment under stand-alone cost methodology. In all other cases, the available procedures are so uncertain and daunting that they have not been invoked once since they were established three years ago. In the more than 20 years since enactment of the Staggers Act, there has been no rate case in which a shipper has prevailed other than where stand-alone costs have been utilized.

The Board should go forward with its proposal to mandate post-merger open gateways, but indicate that the gateway should be kept open both operationally and economically, as at least some railroads concede. AGP agrees with some railroad comments to the effect that it may not be necessary to mandate the retention of all pre-merger gateways; but a strict burden should be placed on the

applicant carriers to demonstrate which pre-merger gateways can be closed without visiting harm upon traffic that has moved over those gateways.

If the Board determines to countenance post-merger actions that make gateways inaccessible through rate increases clearly intended to deter market access as their primary goal, then "open gateway" conditions will be meaningless. It is one matter to say that a merged carrier should be permitted to reduce rates where they reflect newfound post-merger operating economies. It is another matter altogether to sanction rate increases aimed solely at foreclosing the movement of interline traffic or rate adjustments designed to favor system-traffic. The Board can and should use common sense in fashioning appropriate gateway relief that is realistic and effective, but above all should make clear that actions of a market foreclosing nature will not be countenanced.

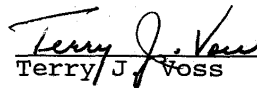
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing pleading to be served on all parties of record by first-class mail, postage prepaid, this 11th day of January, 2001.


Terry J. Voss